

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a knee condition causally related to the accepted February 14, 2003 employment incident.

FACTUAL HISTORY

On February 15, 2003 appellant, then a 36-year-old customs inspector, filed a traumatic injury claim (Form CA-1) alleging that on February 14, 2003 he injured his left knee when he was running in preparation for his training while in the performance of duty. He explained that he noticed soreness and tightness in his knee that did not go away.³ Appellant did not stop work.

In a February 15, 2003 medical report, Dr. Richard Miller, an internist, indicated that appellant suffered a right knee injury and diagnosed overuse/strain of the right knee.

In a June 5, 2019 development letter, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It noted that, although he initially claimed that he injured his left knee, the medical evidence of record indicated that he sustained a right knee injury. OWCP advised him of the type of medical and factual evidence necessary to support his claim and provided a questionnaire for his completion. It specifically requested that appellant clarify why he alleged that he injured his left knee when he had submitted medical evidence showing that he injured his right knee. OWCP afforded him 30 days to respond. No additional evidence was received.

By decision dated July 8, 2019, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the injury and/or events occurred as he described. It noted that he had not responded to its June 5, 2019 development questionnaire or provided information clarifying the alleged February 14, 2003 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On April 13, 2020 appellant, through counsel, requested reconsideration. By decision dated April 15, 2020, 2019, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

OWCP continued to receive evidence.

In a February 22, 2020 narrative report, Dr. Gidon Frame, Board-certified in anti-aging and regenerative medicine, indicated that appellant suffered from preexisting osteoarthritis of his right knee and that appellant no longer worked at the employing establishment. He noted his history of employment beginning 1989 and indicated that he last worked for the employing establishment between 2002 and 2003. Dr. Frame also indicated that appellant previously underwent right knee

³ The record also contains an incomplete occupational disease claim (Form CA-2) form dated March 18, 2019 in which appellant asserted that the physical activities at the employing establishment aggravated his preexisting arthritis in the right knee. In another incomplete Form CA-2a dated March 18, 2019, appellant asserted that he reinjured his right knee on November 7, 2017.

surgeries on July 20, 1989 and April 29, 1992, and sustained a separate left knee injury on March 9, 2003, which OWCP accepted under OWCP No. xxxxxx388. He explained that appellant had a complicated history of knee injuries. Dr. Frame recounted the alleged February 14, 2003 employment incident, noting that appellant was running long distance in preparation for his training when he noticed some pain, soreness, and tightness in his right knee. He opined that the demanding running with his arthritic right knee and the pounding of the knee on the concrete, coupled with his body weight, “highly likely” aggravated his preexisting knee repair and degenerative arthritis. Dr. Frame concluded that appellant’s preexisting, relatively asymptomatic right knee arthritis was rendered substantially symptomatic by the alleged February 14, 2003 employment incident.

Dr. Frame also noted that appellant’s work duties included lifting heavy objects and weights, crunching or crawling in small restricted areas, and climbing. He opined that twisting, grinding, and bending of appellant’s right knee during his work activities aggravated his right knee. Dr. Frame concluded that strenuous work duties at the employing establishment over time accelerated appellant’s osteoarthritis progression. He indicated that appellant’s right knee worsened even after he left the employing establishment, as various positions aggravated his right knee arthritis. Dr. Frame explained that prior arthroscopic surgeries could increase appellant’s risks of developing osteoarthritis. He further explained that appellant’s preexisting right knee injuries, including a complex tear in its cartilage from his nonwork injury in 1989, caused, precipitated, and predisposed him to develop osteoarthritis much more rapidly. Dr. Frame also opined that his left knee problems also contributed to the right knee condition, as appellant had to place much of his body weight on an already damaged right knee to compensate for his left knee injuries. He explained that appellant’s osteoarthritis became destabilized because of the structural articular cartilage loss and associated physiological change of the deteriorative destruction of the knee joints over a course of time, especially the right knee joint. Dr. Frame concluded that the repetitive duties performed at the employing establishment caused, accelerated, and aggravated his preexisting, relatively asymptomatic right knee arthritis and created a bilateral knee condition.

On May 12, 2020 appellant, through counsel, again requested reconsideration.

In an April 30, 2020 response to OWCP’s development questionnaire, appellant provided additional information regarding the alleged February 14, 2003 employment incident. He indicated that he had a preexisting right knee condition and that he previously underwent two surgeries on that knee before the February 14, 2003 employment incident. Appellant asserted that his right knee was relatively asymptomatic until the February 14, 2003 employment incident.

OWCP subsequently received a February 20, 2019 letter, wherein appellant notified the employing establishment that he sustained two separate work-related injuries in 2003. Appellant alleged that he sustained a right knee injury on February 14, 2003 and a left knee injury on March 9, 2003, the latter of which was accepted in a separate claim.

By decision dated August 7, 2020, OWCP modified its July 8, 2019 decision, finding that appellant had established that the February 14, 2003 employment incident occurred, as alleged. The claim remained denied, however, as the medical evidence of record was insufficient to establish causal relationship between his diagnosed condition and the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁵ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁸

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.¹⁰

In a case in which a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation,

⁴ *Supra* note 2.

⁵ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a knee condition causally related to the accepted February 14, 2003 employment incident.

In a February 22, 2020 narrative report, Dr. Frame noted appellant's history of employment since 1989, described the accepted February 14, 2003 employment incident, and diagnosed severe degenerative arthritis in the right knee. He opined that the accepted February 14, 2003 employment incident "highly likely" aggravated his preexisting degenerative arthritis, noting that appellant's strenuous work duties accelerated his osteoarthritis progression over time. Dr. Frame explained that appellant's preexisting, relatively asymptomatic right knee arthritis was rendered substantially symptomatic by the accepted February 14, 2003 employment incident and that his strenuous work duties at the employing establishment over time accelerated appellant's osteoarthritis progression. He also attributed appellant's right knee arthritis to his previously accepted left knee injury, explaining that he had to place much of his body weight on an already damaged right knee to compensate for his left knee injuries. The Board has held that medical opinions that suggest that a condition was "likely" caused by work activities are speculative or equivocal in character and have limited probative value.¹² The Board has also held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.¹³ Moreover, although Dr. Frame attempted to explain the mechanism of how the accepted employment incident caused appellant's diagnosed condition, he failed to distinguish between the effects of the work-related injury and appellant's preexisting right knee arthritis. The Board has consistently held that complete medical rationalization is particularly necessary when there is a preexisting condition involving the same body part, and has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition in such cases.¹⁴ For these reasons, Dr. Frame's report is insufficient to establish causal relationship.

In a February 15, 2003 medical report, Dr. Miller diagnosed overuse/strain of the right knee. However, he did not offer an opinion as to whether appellant's diagnosed condition was causally related to the accepted February 14, 2003 employment incident. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); C.C., Docket No. 19-1071 (issued August 26, 2020); V.W., Docket No. 19-1537 (issued May 13, 2020).

¹² See D.A., Docket No. 20-0951 (issued November 6, 2020).

¹³ See S.D., Docket No. 20-1255 (issued February 3, 2021); F.H., Docket No. 18-1238 (issued January 18, 2019); J.R., Docket No. 18-0206 (issued October 15, 2018).

¹⁴ *Supra* note 11.

of no probative value on the issue of causal relationship.¹⁵ Accordingly, this report is insufficient to meet appellant's burden of proof to establish his claim.

As the medical evidence of record does not contain rationalized medical evidence establishing causal relationship between appellant's diagnosed conditions and the accepted February 14, 2003 employment incident, the Board finds that appellant has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a knee condition causally related to the accepted February 14, 2003 employment incident.

¹⁵ P.C., Docket No. 20-0855 (issued November 23, 2020).

ORDER

IT IS HEREBY ORDERED THAT the August 7, 2020 decision of the Office of Workers' Compensation Programs is affirmed.¹⁶

Issued: August 11, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁶ On return of the case record OWCP should consider administratively combining the present claim with appellant's other claim involving a work-related knee condition, OWCP File No. xxxxxx388.